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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION THREE

In re K.C., a Person Coming Under the
Juvenile Court Law.

SAN MATEO COUNTY HUMAN
SERVICES AGENCY,

Plaintiff and Respondent,

v.

C.T.,

Defendant and Appellant.

A156478

(San Mateo County
Super. Ct. No. 18JD0420)

C.T. (Mother), mother of four-year-old K.C., appeals from the juvenile court's jurisdictional and dispositional orders removing K.C. from her care, dismissing the dependency, and awarding physical custody of K.C. to K.C.'s father, F.C. (Father). She contends: (1) the court erred in removing K.C. from her care; and (2) there was insufficient evidence to support a finding that reasonable efforts were made to prevent K.C.'s removal. We reject the contentions and affirm the orders.

FACTUAL AND PROCEDURAL BACKGROUND

On January 5, 2018, the Butte County Department of Employment and Social Services (Department) filed a petition on behalf of then-two-year-old K.C. alleging K.C. had suffered, or was at substantial risk of suffering, serious physical harm or illness due to her parents' failure to supervise, protect, or provide adequate care for her. K.C. was

living with Mother in a “dirty” home that was “littered with dog feces and urine.” There were about 100 dogs inside the home, and several large bags of marijuana were found within K.C.’s reach. K.C.’s diaper was “severely soiled” and “bulging under her dirty clothes.” The Department alleged Father knew or should have known about the condition of Mother’s home because he was in the home three days before the Department’s social worker was there.

The Department stated in its detention report that a social worker went to Mother’s home on January 3, 2018. There were multiple sheriff’s office and animal control vehicles outside the home, and dozens of dogs were being loaded into vehicles. A deputy sheriff told the social worker that the home “was in deplorable conditions, with dog feces, and urine throughout the home,” and that Mother had previously lived under similar circumstances in the State of Wyoming.

The social worker went inside the home and found piles of dog feces upstairs, on the stairs, and on the patio. There were puddles of urine covering most of the floors in the kitchen and living areas, and the home had a strong smell of feces and urine. There were multiple bags “full of marijuana ‘shake’ ” in places that were accessible to K.C. There was no trash service at the home; the balcony was overflowing with garbage bags and the shower stall was filled with bags of dog feces. The bathroom sink had a “brown ash like substance throughout,” and there was a glass jar full of cigarette butts on the counter. Inside the bedroom was a mattress with a sheet but no blankets, and the bedroom hallway carpet was littered with debris and dirt. Ninety-nine dogs and puppies were removed from the home.

Mother told the social worker that she had been breeding dogs for five years as her sole source of income. She said she was in the process of rehoming the dogs so that she and K.C. could return to Italy, where she has family and a support system. She said she did not know there was marijuana in her home and thought it must have been there when she moved in. The Department reported there were five prior Child Protective Services (CPS) referrals for Mother, including a report that she was engaged in “severe neglect” of K.C. and a report that she was evading CPS.

The social worker spoke to Father, who said that Mother's home was clean and K.C. appeared to be well cared for when he visited three days before the social worker was there. Father denied knowing there was any marijuana in the home and asked whether K.C. could be placed in his care.

The social worker noticed that K.C. engaged in odd behaviors such as eating out of an open hand like a dog would or "nuzzl[ing]" the social worker's hand with her forehead and nose. A physician who examined K.C. also referenced " 'dog like behaviors' " He noted K.C. was unresponsive when he checked her hearing but responded "immediately" when he made animal sounds.

After a contested detention hearing, the juvenile court detained K.C., found Father was a presumed father, and placed K.C. in out-of-home care.

According to the Department's jurisdiction report, a Wyoming Department of Family Services social worker went to Mother's home in Wyoming in November 2017. Father was also there helping Mother move to California. The home had a strong smell of urine, and there were numerous dogs inside large kennels. The floors were covered with dog urine, straw, dirt, and mud. Mother said there were large dogs inside the two bedrooms and did not allow the social worker to look in those rooms. The social worker was concerned for K.C.'s well-being and said she was prepared to have K.C. detained had Mother remained in Wyoming.

A physician reported that K.C. displays " 'animalistic behaviors similar to normal canine behavior,' " " 'maintains poor eye contact, does not wave,' " and " 'tap[s] you' " " 'with a closed fist' " " 'to get your attention. She will also repeatedly nudge you with her nose to get your attention. When excited or happy, she visibly pants with her tongue hanging out of her mouth.' " " 'Despite being nearly 3 years old, she is nonverbal, speaks only single syllables, and cannot assist in any aspect of her own care.' " A Shriners hospital doctor reported that K.C. " 'missed the recommended treatment window for surgery. Her cleft palate should have been repaired between 10–12 months. She will be at risk for speech problems because of delay in treatment.' "

On February 15, 2018, the petition was amended to include an additional allegation that the parents had failed to meet K.C.'s medical and development needs, including failing to seek medical care for her cleft palate.

At a contested jurisdictional hearing, a Department social worker testified regarding the condition of Mother's home, K.C.'s "animalistic behaviors," and the parents' failure to address K.C.'s cleft palate. A deputy sheriff testified regarding what he observed at Mother's home. Photographs the social worker and deputy took were admitted into evidence. The deputy's body camera footage showing the condition of Mother's home was played at the hearing and admitted into evidence.

The social worker testified she did not believe Father's statement that Mother's home was clean and appropriate when he visited "[b]ecause of the severity of the urine and feces . . . and the smell of urine and feces throughout the home." She also noted Father had previously been in Mother's Wyoming home, which was in a similar condition. The social worker was aware that Father wanted K.C. to be placed with him but testified the Department needed to assess Father further before recommending placement with him. The social worker testified that the county assessed Father's home and found it to be appropriate, with the exception of a few safety issues.

Father testified that he wishes to have K.C. placed with him. He acknowledged he was in Mother's home in Wyoming but said he was there for only two and a half days. He testified he went to Mother's home in Butte County every weekend and that the home was clean and all of the dogs were outside. He testified it would not be appropriate for K.C. to live in the home if there were dog feces and urine as depicted in the photographs. Father said he knew K.C. had a cleft palate but did not take her to the hospital because K.C. was in Mother's care and he believed Mother would take care of it.

Mother testified that K.C. stayed primarily in the bedroom, where the dogs never went. She admitted K.C. also goes to the kitchen and the upstairs bathroom but said there are usually only two dogs upstairs. She said there were more dogs inside when animal control visited because she had let the dogs inside to protect them from a neighbor who had threatened to shoot the dogs. She denied there was dog feces on the floors and

explained that the brown spots depicted in the photographs were “[e]arth ground in from outside.” She said her home was clean until “Animal control kept walking in and out” with their muddy shoes. She believed the substance found in her home was left by the prior tenants and was not marijuana but an herb like mint or oregano.

Mother testified that she spoke to doctors, including “doctors in other countries predominantly in Europe,” about K.C.’s cleft palate. Based on her research, she postponed cleft palate surgery because she was concerned “about having such a young child go through a full anesthesia.” She also understood that “as you grow older the actual hole basically gets smaller” so that an older child can undergo “smaller surgery.” She stated she was about to schedule K.C.’s surgery when K.C. was removed from her home. She denied that K.C. acts like an animal and said she has worked with K.C.’s speech by singing and reading to her. She said that if K.C. cannot be placed with her, she would not object to having her placed with Father. She confirmed that Father visited “every couple of weeks” and that K.C. knew, and had a relationship with, him.

The juvenile court sustained the petition with minor modifications, including striking the allegation that K.C.’s clothes were “dirty.” The court found there were dog feces and urine throughout the house and marijuana within K.C.’s reach. The court found that Father, who had been to Mother’s home at least three times since Mother and K.C. moved there, was aware of the “uninhabitable” nature of the home. The court found the parents failed to meet K.C.’s medical and developmental needs. Finally, the court noted that both parents had moved to San Mateo County and ordered that the case be transferred there.

In a June 7, 2018 disposition report, San Mateo County Human Services Agency (Agency) reported that an Agency social worker met with Mother on June 6, 2018. Mother told the social worker that a “ ‘stalker’ ” was to blame for the dependency case. She said “her story starts” with a man to whom she sold a puppy. The man eventually “lured her to Wyoming” with false promises including a nice home and free rent. Mother later realized “the stalker wanted to be more than just acquaintances” and “was also after [K.C.]” He would show up at her Wyoming home unannounced and would open K.C.’s

bedroom door without permission, scaring K.C. The stalker then set up a faulty electric fence for the dogs that would “ ‘break’ and then the female dogs would have litters. This is how she ended up with so many puppies.”

The Agency social worker met with Father, who told her that K.C. “is everything to him.” Father was living in Pacifica with a friend and two other roommates and was in the process of preparing a space in the home for K.C. He said that K.C. sleeps with him whenever he visits her and that they share a close relationship. The Agency recommended that Father participate in services to ensure he is able to protect and provide adequate care for K.C.

The social worker reported that K.C. was doing well in her foster home. She underwent surgery for her cleft palate and was recovering nicely. She was a happy child who smiled during her interactions with her parents and with the Agency social worker. She played with toys and was responsive to directions. She was having a hard time pronouncing words properly, and a developmental assessment was being scheduled for her.

In an addendum report filed on August 9, 2018, the Agency reported that Father was having appropriate visits with K.C. and was attentive to and affectionate with her. His visits had progressed from supervised to monitored, then unsupervised, and an overnight visit was scheduled for August 9, 2018. The social worker assessed his home and found it to be appropriate. He had a toddler bed, a dresser with clothing, and a shelf with toys. He had also found a daycare for K.C. He was always eager to see K.C., attended her medical appointments, and was receptive to guidance from service providers.

Mother failed to communicate with the social worker on many occasions and did not connect with her assigned therapist until a second referral was made. She did not believe she needed the recommended parenting class and said she would look for something else. The Agency recommended that K.C. be placed with Father with family maintenance services.

At an August 13, 2018 hearing, Mother did not object to K.C. having a 30-day visit with Father. Counsel for K.C. agreed to the visit and said the Agency had also approved the extended visit.

The Agency filed a second addendum report on September 21, 2018, stating K.C. was doing well in Father's care. She responded well to him and laughed and smiled. Mother had completed two out of ten parenting class sessions and was visiting K.C. regularly. The Agency noted there were challenges in communicating with Mother.

In a third addendum report filed November 29, 2018, the Agency stated K.C. was thriving in Father's care and her speech appeared to be improving. Father had demonstrated his ability to care for K.C. and was meeting her medical needs. He looked out for K.C.'s interests; for example, he asked to have Mother's visitation times changed because he was concerned K.C. was not getting enough food during her lunch visits with Mother. Mother continued to visit K.C. regularly but was frequently late to her parenting sessions, had "still not completed the work past chapter five of the curriculum," and was critical of the program. She continued to have issues staying in touch with the social worker. The Agency recommended terminating the dependency, with "full" physical custody to Father and joint legal custody to the parents.

At a December 4, 2018 contested disposition hearing, the juvenile court received all of the reports into evidence and stated it had "read the transcript" and "read the case in depth." The court found Mother had not addressed her "problem that [she has] that would allow [her] to think that it is okay to live that way, let alone raise a child in those conditions." The court stated it had "no confidence whatsoever, based on the facts of this case, which are horrific, that [Mother] won't revert back as soon as [she has] a chance because [she has] not addressed the issues that allowed [her] to do the things that [she] did to live in the way that [she] lived." The court found there was "beyond clear and convincing" evidence to follow the Agency's recommendations. The court dismissed the dependency and awarded "full" physical custody to Father and joint legal custody to the parents, with visitation to Mother as agreed by the parties.

DISCUSSION

1. Removal

Mother contends the juvenile court erred in removing K.C. from her care. We disagree.

A dependent child may be removed from parental custody if the juvenile court finds by clear and convincing evidence that “[t]here is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being” of the child if he or she were returned home and “there are no reasonable means by which” to protect the child absent removal. (Welf. & Inst. Code, § 361, subd. (c)(1).)¹ “The parent need not be dangerous and the minor need not have been actually harmed before removal is appropriate. The focus of the statute is on averting harm to the child. [Citations.]” (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1136, overruled on other grounds in *Renee J. v. Superior Court* (2001) 26 Cal.4th 735, 748, fn. 6.)

Although “the [juvenile] court makes findings by the elevated standard of clear and convincing evidence, the substantial evidence test remains the standard of review on appeal.” (*In re Cole C.* (2009) 174 Cal.App.4th 900, 916; *In re Javier G.* (2006) 137 Cal.App.4th 453, 462–463.) In reviewing the juvenile court’s findings, “ ‘the power of an appellate court . . . begins and ends with a determination as to whether or not there is any substantial evidence, whether or not contradicted, which will support the conclusion of the trier of fact. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible.’ ” (*In re Brison C.* (2000) 81 Cal.App.4th 1373, 1378–1379.) “We do not pass on the credibility of witnesses, attempt to resolve conflicts in the evidence or evaluate the weight of the evidence.” (*In re Megan S.* (2002) 104 Cal.App.4th 247, 251.)

Here, there was ample evidence supporting the juvenile court’s findings regarding removal. As the court stated at disposition, Mother’s home was “not [just] dirty,” but

¹ All further, undesignated statutory references are to the Welfare and Institutions Code.

was in “horrific conditions.” There were 99 dogs inside the home, and K.C. was living in “deplorable conditions, with dog feces, and urine throughout the home” and multiple large bags of marijuana within her reach. Mother had lived under similar circumstances in Wyoming, and a Wyoming Department of Family Services social worker was prepared to have K.C. detained had Mother remained in Wyoming.

Mother had also failed to take adequate care of K.C.’s medical and developmental needs. She claimed she moved to Butte County to arrange for K.C.’s cleft palate surgery yet did not make an appointment until after K.C. was detained. A physician reported that K.C. had behavioral issues, including engaging in “ ‘animalistic behaviors,’ ” and also had problems with her speech.

Moreover, there was significant evidence presented to show that Mother failed to address the issues leading to K.C.’s removal. She denied the home was dirty and blamed others for her current situation by, among other things, stating that a “ ‘stalker’ ” caused her dogs to have many puppies, that animal control officials dirtied her home with their muddy shoes, or that the prior tenants were responsible for the marijuana found within K.C.’s reach. When she failed to make adequate progress in her parenting program, she blamed the program for being too rigorous. She did not maintain regular contact with the Agency and did not follow up regarding her therapy until after the Agency made a second referral.

As noted, the juvenile court had “no confidence whatsoever . . . that [Mother] won’t revert back as soon as [she has] a chance because [she has] not addressed [her] issues” In light of the condition of Mother’s home, her failure to address K.C.’s medical and developmental needs, and her refusal to acknowledge or address the problems that led to K.C.’s removal, the court reasonably determined there would be a substantial danger to K.C.’s “physical health, safety, protection, or physical or emotional well-being” if she were returned to Mother’s care, and that there were “no reasonable means by which” to protect her absent removal. (§ 361, subd. (c)(1).)

Mother argues K.C. should not have been removed from her care because, by the time the disposition hearing took place, 11 months had passed and she had moved into an

appropriate apartment that “did not allow dogs.” The juvenile court, however, is authorized to consider past events and a parent’s progress or lack thereof in determining whether there is a present danger to the child. (See *In re T.V.* (2013) 217 Cal.App.4th 126, 133 [“A parent’s past conduct is a good predictor of future behavior”].) Here, as noted, Mother lived in “horrific conditions,” denied the home was inappropriate for K.C., and failed to fully participate in services. Under these circumstances, the court could reasonably find that Mother had not adequately addressed the issues leading to the dependency and was therefore likely to “revert back as soon as [she has] a chance”

Mother also argues the juvenile court’s order was “inconsistent” because the court found Mother was a danger to K.C. yet dismissed the dependency without placing any limits on her visitation rights. She argues that the fact that the court did not limit her visitation rights shows the court believed she was not a danger to K.C. We disagree with Mother’s interpretation of the court’s order. The record shows that Father had proven himself to be a fit parent. He was responsible, looked out for K.C.’s interests, and protected her. The Agency noted, for example, that as soon as he realized K.C. was not being adequately fed during her lunch visits with Mother, he asked that Mother’s visits be changed to a different time of the day. In light of Father’s ability to recognize K.C.’s needs and place her interests over those of Mother’s, the court could reasonably determine that allowing Mother to have visits only as agreed by Father provided sufficient protection for K.C.

Mother also claims the juvenile court’s order must be reversed because the court failed to make explicit findings as required by section 361, subdivision (e). That subdivision provides in part, “The court shall state the facts on which the decision to remove the minor is based.” We disagree the order must be reversed. First, the court adequately explained its findings and orders by stating the reasons it believed removal was necessary, e.g., that Mother’s home was in “horrific conditions” and that she failed to address the issues leading to removal. Second, even assuming the court’s findings were somehow inadequate, we conclude that any error was harmless because there was substantial evidence from which the court could find by clear and convincing evidence

that removal was necessary. (See *In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218 [harmless error analysis applies to court's failure to make express findings].)

2. Reasonable Efforts

Mother contends there was insufficient evidence to support a finding that reasonable efforts were made to prevent K.C.'s removal. We disagree.

Before a juvenile court removes a dependent child from the custody of his or her parents, it must "make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal The court shall state the facts on which the decision to remove the minor is based." (§ 361, subd. (e).) A court's failure to make required findings is error but "will be deemed harmless where 'it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.' " (*In re Jason L.*, *supra*, 222 Cal.App.3d at p. 1218.)

Here, the juvenile court did not make express findings regarding reasonable efforts, but the subject error was harmless. As noted, the Agency offered various services to Mother, including referring her to therapy and a parenting program and providing regular, supervised visitation. The Agency ensured K.C. received the medical care and cleft palate surgery she needed, thereby ameliorating some of the issues that had brought K.C. within the court's jurisdiction.

Despite being offered services, Mother was frequently late to her parenting sessions, did not complete the program, and was critical of the curriculum. She said she did not believe she needed the class and said she was going to look for something else, but there is nothing in the record indicating she looked for or found an alternative class. She did not follow up with therapy until the Agency made a second referral, and failed to maintain regular contact with the Agency. Her visitation never progressed to a point where the Agency or the court deemed it appropriate to award her unsupervised or overnight visits. It is difficult to see what other efforts the Agency could have made to prevent removal, when Mother patently failed to fully participate in the services that were provided.

Mother asserts there were other services that could have been given, including treatment for possible mental health issues. “[R]easonable efforts,” however, “need only be reasonable under the circumstances, not perfect [citation].” (*In re H.E.* (2008) 169 Cal.App.4th 710, 725.) Given the total efforts that were made in this case, we conclude there was substantial evidence supporting the implied finding that reasonable efforts were made to prevent K.C.’s removal, and that there is no reasonable probability Mother would have obtained a better result had the court made express findings.

DISPOSITION

The jurisdictional and dispositional orders are affirmed.

Wick, J.*

WE CONCUR:

Siggins, P. J.

Fujisaki, J.

A156478/*In re K.C.*

* Judge of the Superior Court of Sonoma County, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.